IN THE DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. _____, Courtroom _____

COMPLAINT

RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, MARTINA NAVRATILOVA, BRET TANBERG, PRISCILLA INKPEN, THE CITY AND COUNTY OF DENVER, THE CITY OF BOULDER, THE CITY OF ASPEN, and THE CITY COUNCIL OF ASPEN,

Plaintiffs,

v.

ROY ROMER as Governor of the State of Colorado and GAIL NORTON as Attorney General of the State of Colorado,

Defendants.

Plaintiffs Richard G. Evans, Angela Romero, Linda Fowler, Paul Brown, Martina Navratilova, Bret Tanberg, Priscilla Inkpen, the City and County of Denver, the City of Boulder, the City of Aspen, and the Aspen City Council, through counsel, in Complaint against the defendants, state as follows:

INTRODUCTION

This is an action seeking a declaration that Amendment 2, approved by the Colorado electorate in the general election of November 3, 1992, violates the constitutions of the United States and the State of Colorado. The proposed amendment relegates gay men, lesbians and bisexuals to a second class citizenship contravening the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as other state and federal constitutional provisions.

Plaintiffs seek to enjoin defendants from proclaiming, declaring, or acknowledging the proposed amendment to be part of the Constitution of Colorado, and from enforcing or implementing it in any way.

JURISDICTION AND VENUE

This action for declaratory and injunctive relief is brought under the Uniform Declaratory Judgments Act, Colo. Rev. Stat. §§ 13-51-101, et seq., Rules 57 and 65 of the Colorado Rules of Civil Procedure, and 42 U.S.C. § 1983.

State courts have jurisdiction over claims arising under 42 U.S.C. §1983 by virtue of the Supremacy Clause of the Article IV of the United States Constitution.

Venue is proper in this Court under Rule 98(c) of the Colorado Rules of Civil Procedure.

GENERAL ALLEGATIONS

Background

1. On November 3, 1992, the following proposed amendment to Article II of the Colorado Constitution was submitted to the voters as Amendment 2:

> Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be self-executing.

2. On November 5, 1992, the Denver Post reported that 811,479 electors had voted for the proposed amendment and 707,525 electors had voted against the proposed amendment.

3. On information and belief, a proclamation giving effect to the proposed amendment will take place on or before January 4, 1993.

Plaintiffs

4. Plaintiff Richard G. Evans is a citizen of the United States and a resident of Denver, Colorado. He is employed by the City and County of Denver. Plaintiff Evans is a gay man.

5. Plaintiff Angela Romero is a citizen of the United States and a resident of Denver, Colorado. She is employed by the City and County of Denver as a police officer. Plaintiff Romero is a lesbian.

6. Plaintiff Paul Brown is a citizen of the United States and a resident of Denver, Colorado. He is employed by the State of Colorado. Plaintiff Brown is a gay man.

7. Plaintiff Linda Fowler is a citizen of the United States and a resident of Denver, Colorado. She is employed as a contract administrator by a private employer. Plaintiff Fowler is a lesbian.

8. Plaintiff Martina Navratilova is a citizen of the United States and a resident of Aspen. She is a professional tennis player. Plaintiff Navratilova is a lesbian.

9. Plaintiff Priscilla Inkpen is a citizen of the United States and a resident of Boulder, Colorado. Plaintiff Inkpen is an ordained minister. Plaintiff Inkpen is a lesbian.

10. Plaintiff Bret Tanberg is a citizen of the United States and a resident of Evans, Colorado. He is currently afflicted with Acquired Immune Deficiency Syndrome. Plaintiff Tanberg is a heterosexual.

11. Plaintiffs City of Boulder and City of Aspen are duly established and constituted home rule municipal corporations under Section 6 of Article XX of the Constitution of Colorado. Plaintiff City and County of Denver is a duly established and constituted home rule municipal corporation under Sections 4 and 5 of Article XX of the Constitution of Colorado.

12. Plaintiff City Council of the City of Aspen is the duly authorized legislative and governing body for the City of Aspen pursuant to Article III of the Home Rule Charter for the City of Aspen.

Defendants

13. Defendant Roy Romer is Governor of the State of Colorado. Defendant Romer is required by Article IV, Section 2 of the Colorado Constitution to "take care that the laws be faithfully executed." Defendant Romer is also required by Article V, Section 1, Paragraph (4) of the Colorado Constitution to make a proclamation, the effect of which will be to enact the proposed amendment, not later than thirty days after the vote has been canvassed. The vote is to be canvassed by the Secretary of State within 21 days after the election.

14. Defendant Gail Norton is Attorney General of the State of Colorado and required by Colo. Rev. Stat. § 24-31-101(1)(a) to "prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor."

Factual Allegations

15. Sections 28-93 through 28-97 of the Denver Municipal Code currently protect plaintiffs Evans, Romero, Brown, and Fowler against discrimination in employment, educational institutions, real estate transactions, public accommodations, and health and welfare service on the basis of their sexual orientation. If the proposed amendment repeals these sections as they apply to gay men, lesbians and bisexuals, plaintiffs Evans, Romero, Brown, and Fowler will be exposed to the real, immediate and substantial risk of discrimination on the basis of their sexual orientation in educational institutions, real estate transactions, public accommodations, and health and welfare services.

16. Rules and Regulations of the Denver Police Department, RR-122, and §117.01 ("Officer's Bill of Rights") in the Police Department Operations Manual currently protect plaintiff Romero from discrimination on the basis of her sexual orientation. Following enactment of the proposed amendment, Plaintiff Romero will lose these protections and be exposed to the real, immediate and substantial risk of discrimination in her employment on the basis of sexual orientation.

17. An executive order issued by Governor Roy Romer and dated December 10, 1990, and policy 11-1 of the Code of Colorado Regulations currently protect plaintiff Brown from discrimination in his employment. Following enactment of the proposed amendment, Plaintiff Brown will lose these protections and be exposed to the real, immediate and substantial risk of discrimination in his employment on the basis of his sexual orientation.

18. On November 28, 1977, the City of Aspen, by and through the City Council for the City of Aspen, adopted Ordinance No. 60 (Series of 1977) prohibiting discrimination in employment, housing, public services and public accommodations within the City of Aspen on the bases of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, affectional or sexual orientation, family responsibility, or political affiliation. The ordinance has been codified in section 13-98 of the Aspen Municipal Code.

19. Plaintiff Navratilova currently is protected from discrimination on the basis of her sexual orientation by Aspen Municipal Code section 13-98. If the proposed amendment repeals this section as it applies to gay men, lesbians and bisexuals, Plaintiff Navratilova will be exposed to the real, immediate and substantial risk of discrimination on the basis of her sexual orientation.

20. Plaintiff Inkpen is currently protected from discrimination on the basis of her sexual orientation by sections 12-1-2 through 4 of the Boulder Revised Code which prohibits discrimination on the basis of sexual orientation in housing, employment and public accommodations. The proposed amendment purports to repeal these provisions as they apply to gay men, lesbians and bisexuals. If the proposed amendment repeals these sections as they apply to gay men, lesbians and bisexuals, plaintiff Inkpen will be exposed to the real, immediate and substantial risk of discrimination on the basis of her sexual orientation in housing, employment and public accommodations.

21. Plaintiff Tanberg is currently protected against discrimination based on his illness by 29 U.S.C. § 794 and Colo. Rev. Stat. § 24-34-402(a). Plaintiff Tanberg is a heterosexual but suffers discrimination based on a perception that he is a gay man. If the proposed amendment is enacted, Plaintiff Tanberg will be exposed to the real, immediate and substantial risk that such perceptions will be used as a pretext to discriminate against him on the basis of his illness.

22. The defendants are state officials acting under the color of state law within the meaning of 42 U.S.C. § 1983.

23. Following enactment of the proposed amendment, heterosexuals will be able to take advantage of the above stated protections against discrimination on the basis of sexual orientation provided that the discrimination is not based on a perception that the person discriminated against is a gay man, lesbian or bisexual, but gay men, lesbians and bisexuals or persons so perceived will not be able to avail themselves of the protections.

24. Following enactment of the proposed amendment, citizens of Colorado, including plaintiffs, will be unable to seek legislation, executive policies, and judicial determinations in the interest of gay men, lesbians or bisexuals in state, municipal or school district forums regardless of the merits of, or need for, such legislation, policies or determinations. This diminished status does not extend to any other group or class of citizens under the laws or constitution of the State of Colorado.

25. Following enactment of the proposed amendment, the force of state law will have the effect of coercing plaintiffs to adopt, or profess to adopt, beliefs and status promoted by a particular religion.

26. Following enactment of the proposed amendment, the plaintiffs will have to guess as to the proposed amendment's scope and meaning and will thereby be deterred from engaging in lawful and constitutionally protected activities.

27. Following enactment of the proposed amendment, plaintiffs will face the real, immediate and substantial risk of subjective, arbitrary and viewpoint-based enforcement of its prohibitions.

28. The proposed amendment stigmatizes Colorado citizens on the basis of their sexual orientation, a characteristic or trait that is immutable.

29. Following enactment of the proposed amendment, plaintiffs will be deterred from holding and expressing views consistent with their sexual orientation.

30. Following enactment of the proposed amendment plaintiffs will be deterred from associating in ways consistent with their sexual orientation.

31. Following enactment of the proposed amendment, the state will affirmatively authorize, encourage and may in fact require discrimination on the basis of gay, lesbian or bisexual orientation.

32. The proposed amendment has no secular purpose. Instead its purpose, and primary effect, is to advance a particular religious belief.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Equal Protection Clause

33. Plaintiffs incorporate by reference paragraphs 1 through 32.

34. The proposed amendment purports to forbid the courts of the State of Colorado from enforcing federal or state statutes or constitutional provisions that recognize or protect gay men, lesbians or bisexuals.

35. The proposed amendment affirmatively authorizes and encourages public and private discrimination on the basis of perceived gay, lesbian and bisexual orientation and establishes the right to discriminate against gay men, lesbians and bisexuals as one of the basic policies of the State of Colorado.

36. By prohibiting state and local government entities and school districts from enacting legislation granting minority or protected status to gay men, lesbians and bisexuals or from banning discrimination against gay men, lesbians and bisexuals in the exercise of their fundamental right to vote and to participate

equally in the process of government regardless of circumstances that may already exist or arise in the future, the proposed amendment on its face invidiously discriminates against these groups.

37. For the above stated reasons, the proposed amendment deprives the plaintiffs of their rights to equal protection of the laws as protected by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and by the Due Process Clause in Article II, Section 25 of the Colorado Constitution.

SECOND CLAIM FOR RELIEF

Freedom of Association and Expression

38. Plaintiffs incorporate by reference paragraphs 1 through 37.

39. The proposed amendment disadvantages and discriminates against persons who hold a particular point of view by excluding a particular idea or belief about sexual orientation from being acted on through normal legislative, executive and judicial processes in Colorado.

40. The proposed amendment has the purpose and effect of limiting meaningful individual and collective advocacy of political, social and economic change on behalf of gay men, lesbians and bisexuals in securing equal rights for these persons.

41. The proposed amendment has the purpose and effect of coercing persons to adhere or profess to adhere to a single, state-approved belief respecting gay, lesbian or bisexual orientation.

42. For the above stated reasons, the proposed amendment violates the plaintiffs' rights under the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution.

THIRD CLAIM FOR RELIEF

Establishment Clause

43. Plaintiffs incorporate by reference paragraphs 1 through 42.

44. The proposed amendment is based upon and embodies a particular religious view regarding gay, lesbian and bisexual orientation. The primary effect of the proposed amendment is to

advance a particular religious belief with respect to sexual orientation.

45. For the above stated reasons, the proposed amendment violates the plaintiffs' rights under the First Amendment to the United States Constitution and Article II, Section 4 of the Colorado Constitution.

FOURTH CLAIM FOR RELIEF

Petition Clause

46. Plaintiffs incorporate by reference paragraphs 1 through 45.

47. By prohibiting state and local government entities from adopting legislation or policies granting minority or protected status to, or banning discrimination against gay men, lesbians or bisexuals, despite any showing of need that may exist now or in the future, the proposed amendment prevents plaintiffs from petitioning their government, including access to the courts and to the legislative and executive branches of government, for a redress of grievances in violation of their rights under the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution.

FIFTH CLAIM FOR RELIEF

Vagueness

48. Plaintiffs incorporate by reference paragraphs 1 through 47.

49. The proposed amendment provides no definitions of the terms contained in it, nor specifies the intended sweep of its prohibitions.

50. Plaintiffs and others are forced to guess as to the proposed amendment's scope and meaning.

51. The proposed amendment invites subjective, arbitrary, and viewpoint-based enforcement.

52. By imposing impermissibly vague prohibitions, the proposed amendment on its face violates the plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution, as well as the Due Process Clause of Article II, Section 25 of the Colorado Constitution and Article II, Section 4 of the Colorado Constitution.

SIXTH CLAIM FOR RELIEF

Republican Form of Government

53. Plaintiffs incorporate by reference paragraphs 1 through 52.

54. By allowing Colorado voters to deprive plaintiffs of certain fundamental rights, as elsewhere alleged in this complaint, the use of the initiative as a means for adopting the proposed amendment is a violation of Article IV, Section 4 of the United States Constitution, under which each state and the citizens of each state, are guaranteed a republican form of government, and of the Enabling Act to the Colorado Constitution that also guarantees to the plaintiffs a republican form of government.

SEVENTH CLAIM FOR RELIEF

Limits on Initiative

55. Plaintiffs incorporate by reference paragraphs 1 through 54.

56. An initiated constitutional amendment that places certain legislation beyond the reach of the general assembly violates Article V, section 1(4) of the Colorado Constitution, which provides that "[t]his section [reserving to the people the power to initiate amendments to the constitution] shall not be construed to deprive the general assembly of the power to enact any measure."

EIGHTH CLAIM FOR RELIEF

Article XX of the Colorado Constitution

57. Plaintiffs incorporate by reference paragraphs 1 through 56.

58. The cities of Denver, Aspen and Boulder have exercised the home rule powers granted to them by Section 6 of Article XX of the Colorado constitution to prohibit discrimination based on sexual orientation in various settings. A construction purporting to void these ordinances as they apply to gay men, lesbians and bisexuals would be in conflict with the limitation stated in Article XX of the Colorado Constitution.

59. A constitutional amendment placing certain legislation, regulations and policies beyond the reach of municipalities when such legislation, regulations and policies are required by local conditions would usurp the powers granted to home rule cities by Article XX, Section 6 of the Colorado Constitution. Article XX

protects those powers except when there is an explicit declaration to the contrary. The proposed amendment is not such a declaration.

60. Article XX of the Colorado Constitution, enacted in 1902 and establishing home rule authority, operates as an implied limitation on Article V, which reserves to the people the power to initiate amendments to the constitution, enacted as part of the original constitution in 1876.

NINTH CLAIM FOR RELIEF

Supremacy Clause and Access to Courts

61. Plaintiffs incorporate by reference paragraphs 1 through 60.

62. The proposed amendment prevents state courts and municipal courts from hearing cases raising claims or defenses that involve federal or state statutes, local ordinances and policies, or constitutional provisions that recognize or protect existing or future rights of gay men, lesbians or bisexuals. The proposed amendment places the state government and municipalities in the position of incurring legal liability for violation of the constitutional provisions.

63. For the above stated reasons, the proposed amendment violates the Supremacy Clause of the United States Constitution, Article VI, Section 2 and the access to the courts provision of the Colorado Constitution, Article II, Section 6.

TENTH CLAIM FOR RELIEF

Limitation on Amendments to State Constitution

64. Plaintiffs incorporate by reference paragraphs 1 through 63.

65. Although the People of the State of Colorado retain the power to amend the state constitution, the state constitution prohibits an amendment that conflicts with the federal constitution. The proposed amendment conflicts with the federal constitution.

66. The proposed amendment unlawfully attempts to limit the constitutional authority of home rule cities as granted under Article XX of the Colorado Constitution to adopt and enforce legislation or regulations protecting rights as granted to citizens under the Constitution of the United States, including legislation and regulations prohibiting discrimination within their municipal boundaries on the basis of sexual orientation.

66. For the above stated reasons, the proposed amendment violates Article II, Section 2 of the Colorado Constitution.

WHEREFORE, the plaintiffs pray for relief and judgment as follows:

A. to declare that the proposed amendment to Article II of the Colorado Constitution violates the United States Constitution, 42 U.S.C. § 1983, and the Colorado Constitution on the above enumerated grounds;

B. to enjoin defendant Romer from proclaiming the vote which would otherwise give effect to the proposed amendment;

C. to enjoin defendant Romer from enforcing the proposed amendment;

D. to enjoin defendant Norton from enforcing the proposed amendment;

E. to declare that the protections adopted by various state and local governmental entities prohibiting discrimination on the basis of sexual orientation remain in force as adopted by the respective entities;

F. for costs, expert witness fees, and attorney fees as may be allowed by law; and

G. for such other and further relief as the Court deems just and proper.

Respectfully submitted this 12th day of November, 1992.

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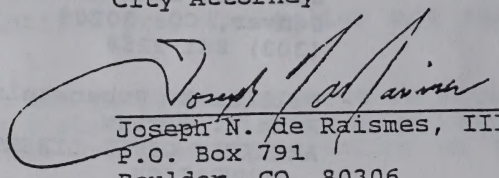

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